



09/060,867
Attorney Docket No.: ACUI-1100-1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Applicant: Andrew T. Busey, et al.

Serial No.: 09/060,867

Filing Date: April 15, 1998

Title: METHOD AND APPARATUS FOR REAL TIME
NETWORK COMMUNICATION

CERTIFICATION UNDER 37 CFR §1.10

I hereby certify that the documents listed below are being deposited with the United States Postal Services as "Express Mail" in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on May 3, 1999.



Rebecca J. Morrison

Assistant Commissioner of Patents
Washington, D.C. 20231

**DECLARATION BY EDWARD C. HORVATH IN SUPPORT OF
PETITION TO MAKE SPECIAL BECAUSE OF ACTUAL INFRINGEMENT**

I, Edward C. "Ned" Horvath, Chief Technical Officer for Acuity Corporation (assignee of the above-referenced application) do hereby make the following declarations:

1. The present application is a continuation application filed April 15, 1999 as a continuation of parent application serial number 08/722,898, now issued as U.S. Patent Number 5,764,916 (the "916 Patent").

2. On or about January 1997, named inventor Andrew Busey, at the time an employee of the assignee *ichat, inc.* ("ichat"), initially became aware that eShare Technologies ("eShare") had developed a chat-based product accessible through the eShare web site that might infringe the claims of this and other applications filed by *ichat*.

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3. On or about May 1998, in my role as *ichat's* Chief Technology Officer, I became aware that Yahoo, America OnLine ("AOL") and Excite had each deployed a chat-based product accessible through these company's respective web sites that might infringe the claims of this patent application.

4. On or about August 1998, assignee *ichat* changed its corporate name to Acuity Corporation ("Acuity").

5. On or about May 1, 1999, I completed a rigid comparison of the eShare, AOL, Yahoo and Excite products with the claims of the present application. Based on this comparison, it is my opinion that at least Claims 1-3 of this patent application are unquestionably infringed by the eShare, AOL, Yahoo and Excite products.

6. The eShare product was accessed by going to an eShare customer at the web site www.lockon.com (see attached Exhibit A).

7. The Yahoo product can be accessed at web site www.yahoo.com (see attached Exhibits B-G).

8. The AOL product can be accessed at web site www.aol.com (see attached Exhibits H and I).

9. The Excite product can be accessed at web site www.excite.com (see attached Exhibits J and K).

10. I have a good knowledge of the pertinent prior art. The prior art made of record in the parent '916 patent, and therefore of record in this continuation application, along with the art contained in the accompanying Supplemental Information Disclosure Statement represent the pertinent prior art.

11. I believe that all of the claims in this application are allowable over the prior art.

12. All statements made herein of my own knowledge and are true and all statements made on information and belief are believed to be true; these statements were made

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with the knowledge that willful false statements and the like so made are punishable by fine, imprisonment or both under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Respectfully submitted,



Edward C. Horvath
Chief Technical Officer, Acuity Corporation

Date: May 3, 1999